

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No 7 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

M/S.PRINCE EMERY (INDIA)

Versus

THE STATE OF GUJARAT

Appearance:

MR RD PATHAK for Petitioner

MR HV CHHATRAPATI for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 23/11/98

ORAL JUDGEMENT (per R. Balia, J.)

At the instance of the assessee, the Gujarat
Sales Tax Tribunal has referred the following question of
law arising out of its order dated 5.9.1992 for the
decision of this court.

"Whether, on the facts and in the circumstances of the case, the sales made against the certificates in Form Nos. 17-A and 19 after the date of receipt of exemption certificate under entry 118 of the notification under section 49(2) of Gujarat Sales Tax Act, 1969 even before that date would be liable to be discarded and the tax applicable thereto would be required to be taken into consideration for the computation of the aggregation of tax exemption limit."

2. The assessee is a partnership firm registered under the Indian Partnership Act, 1932, and it carries on business of manufacture of emery powder out of bauxite and coal. The applicant had set up its industry in a backward area and was granted an eligibility certificate as well as exemption certificate as required under provisions of entry 118 by Government Notification issued under sec. 49(2) of the Gujarat Sales Act, 1969. In terms of the certificate, the applicant was entitled to exemption upto a limit of Rs. 4,82,982/- and this exemption limit was to be operative for the period of 7 years from the commencement of production. During the period in question assessee had made sales against declaration in Form Nos. 17A and 19 which were given to him by his buyers who were recognised registered dealers under the Gujarat Sales Tax Act issuing certificate in terms of Sec. 13 of the Act. The applicant in his assessment claimed deduction of such turnover from its taxable turnover in terms of Sec. 7 of the Act. The Sales Tax Officer had allowed the assessee's claim. However, the Assistant Commissioner of Sales Tax set aside that order in revision by holding that, as the assessee was entitled to exemption under entry 118, he is not entitled to claim deduction under any other provision of the Act, in computing tax leviable on the assessee the purpose of computing tax exemption enjoyed by the assessee during the period to be adjusted against exemption limit. The assessee's contention is that for the purpose of computing tax leviable during that period to be adjusted against exemption limit, the assessment has to be made as per provisions of the Act in the absence of any provision to the contrary.

3. The issue raised in this case is similar to the one raised in M/s. Ardeec Engineering (Saurashtra) P. Ltd. vs. The State of Gujarat, Sales Tax Reference No. 4/97 decided on 21-23/11/97. In said decision claim of the assessee has been upheld. Following the aforesaid decision, this reference stands disposed of by answering the question referred to us in the negative, that is to

say, in favour of the assessee and against the Revenue.
There shall be no order as to costs.

(hn)